



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:**     Fairey Microfiltrex Division

**File:**           B-227086

**Date:**           July 30, 1987

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### DIGEST

Protest filed more than 10 working days after protester knew the basis for protest is untimely.

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### DECISION

Fairey Microfiltrex Division of Fairey Arlon, Inc., contends that a technical data package it submitted for approval as an alternate source under Department of the Air Force request for proposals (RFP) No. F09603-87-R-0114, a sole-source solicitation for filter elements, improperly was rejected for failure to contain complete drawings. We dismiss the protest as untimely.

Warner Robins Air Logistics Center issued the RFP on November 16, 1986, to HR Textron, specifying a part for which HR Textron was the only approved source. Fairey, responding to a synopsis in the Commerce Business Daily, submitted a technical data package and a price proposal to Warner Robins shortly before HR Textron's offer was due,<sup>1/</sup> requesting evaluation of the package for source approval as equivalent to the HR Textron part.

Fairey's technical proposal was received and forwarded to the Air Force Planning and Technical Support Office for evaluation. Fairey was notified by letter of March 20, 1987, that the Air Force did not possess the necessary data required to evaluate the proposal; the demand for the item would not warrant further delay of the current purchase; and Fairey therefore would not be approved as an alternate

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<sup>1/</sup> HR Textron advised the government by letter dated December 3 that it had acquired Purolator Technologies, Inc. (PTI). As a result, HR Textron merged its Filter Products Group with PTI, and PTI responded directly to the solicitation.

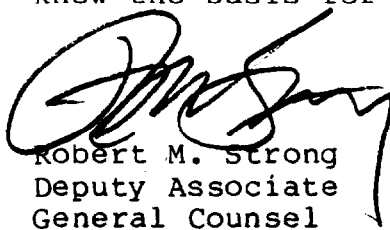
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source for the acquisition. The letter also advised the firm's submission nevertheless would be evaluated further for purposes of qualifying Fairey for future acquisitions. Fairey filed the protest in our Office on May 1.

The Air Force argues that Fairey's protest is untimely because the basis for protest was provided in the March 20 letter, but the protest was not filed within 10 working days afterwards, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1987). Fairey responds that the March 20 letter was based on erroneous information, and was followed by a series of telephone conversations between Fairey and the Air Force as to precisely what drawings, if any, were in the Air Force's possession. Fairey states that it did not protest on receipt of the letter as it believed that the Air Force did have drawings and data applicable for qualification of Fairey's product.

We agree with the Air Force. The March 20 letter was clear that the Air Force simply was not going to consider Fairey's offer for purposes of award in the procurement in issue, and that any further review could apply only to future purchases. In any event, we have recognized that a company may choose to continue pursuing a matter with the contracting agency instead of filing a protest, even after the agency has advised that it rejects the firm's position, but doing so does not toll the 10 working day period for filing a protest with our Office. Discount Machinery & Equipment, Inc.--Request for Reconsideration, B-223459.2, July 17, 1986, 86-2 C.P.D. ¶ 80.

The protest, filed more than 10 working days after Fairey knew the basis for it, is dismissed.



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